

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

STEVE MICHAEL COX,
Plaintiff,

v.
GLEN WHORTON, et al.,
Defendants.

3:08-CV-110-RCJ(VPC)

ORDER

Before the Court is Plaintiff's Opposition to Magistrate Judge's Report (In Particular Count VII Issues) (#26) filed on May 13, 2009. This action was referred to U.S. Magistrate Judge Valerie P. Cooke pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4. The Magistrate Judge submitted her Report and Recommendation (#25) on April 30, 2009, recommending that this Court enter an order granting in part denying in part Defendants' Motion to Dismiss (#11). Defendants' Response to Plaintiff's Objection to Report and Recommendation (#31) was filed on May 29, 2009.

I. ANALYSIS

A. Review of Magistrate Judge's Order

Pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 3-2, a party may file specific written objections to the findings and recommendations of a magistrate judge made pursuant to LR IB 1-4. The district court must make a *de novo* determination of those portions of the

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1 magistrate judge's report to which objection is made and may accept, reject, or modify, in
2 whole or in part, the findings or recommendations made by the magistrate judge. LR IB 3-2(b).
3 *De novo* review means the court must consider the matter anew, the same as if it had not
4 been heard before and as if no decision previously had been rendered. Ness v.
5 Commissioner, 954 F.2d 1495, 1497 (9th Cir. 1992). Thus, although the district court need
6 not hold a *de novo* hearing, the court's obligation is to arrive at its own independent conclusion
7 about those portions of the magistrate judge's findings or recommendation to which objections
8 are made. United States v. Remsing, 874 F.2d 614, 617 (9th Cir. 1989).

9 After conducting a *de novo* review of the record, the Court accepts and adopts the
10 Magistrate Judge's Minutes of the Court (#25).

11 III. CONCLUSION

12 IT IS HEREBY ORDERED that the court ACCEPTS and ADOPTS in whole the Report
13 and Recommendation of U.S. Magistrate Judge (#25), and Plaintiff's Opposition to Magistrate
14 Judge's Report (In Particular Count VII Issues) (#26) is DENIED.

15 IT IS FURTHER ORDERED that Defendants' Motion to Dismiss (#11) is GRANTED as
16 to:

- 17 1. All claims against defendants Miller, McDaniel, MacArthur, Whorton, D'Amico,
18 Endel and Tripp, including those in Counts V, VII, and VIII;
- 19 2. All claims brought against all remaining defendants in their official capacities for
20 money damages;
- 21 3. Count V – all claims against all defendants. These claims are barred by the
22 doctrine of *res judicata*; and
- 23 4. Count VIII – Plaintiff's Eighth Amendment claims against defendant Lemich with
24 regard to the November 2, 2005 alleged denial of medial care. Plaintiff failed to exhaust his
25 administrative remedies.

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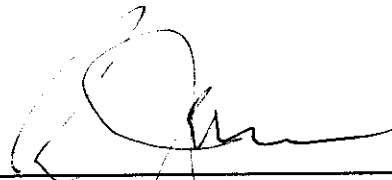
1 IT IS FURTHER ORDERED that Defendants' Motion to Dismiss (#11) is DENIED as
2 to:

- 3 1. Counts I and II;
4 2. Count VII – Plaintiff's claims against defendant Bishop; and
5 3. Count VIII – Plaintiff's First and Eighth Amendment claims against defendant
6 Lemich with regard to the July 26, 2006 alleged retaliatory denial of medical care.

7 The Clerk of the Court shall enter judgment accordingly.

8 IT IS SO ORDERED.

9 DATED: This 29 day of October, 2009.

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13 Robert C. Jones
14 UNITED STATES DISTRICT JUDGE
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